

Remarks
submitted June 2009

[001] This is in response to the Office Action dated 19 June 2009.

[002] Amendments: None, at this time.

[003] Election: In response to the requirement to elect one of species I, II, or III, applicants elect species I, whereby claims 1-15,18,19 should be examined.

[004] 1st Traverse: Applicants traverse the requirement for election of species.

The examiners base their requirement for election of species on their assessment that the Ricks patent US-4,567,703 will or might affect the patentability of certain of the claims. The effect of the Ricks disclosure is prominent in the examiners' reasons for requiring election.

However, MPEP 806.02 makes it clear that examiners should not introduce patentability questions when making a decision on the question of restriction. Thus, the reasoning for requirement the election is untenable.

[005] 2nd Traverse: Furthermore, the examiners's basis for imposing the election requirement is that the Ricks disclosure renders certain species unpatentable over each other.

However, MPEP 801.01(a) makes it clear that election of species should not be required if the species claimed are considered clearly unpatentable (obvious) over each other.

[006] For these reasons, the reasoning given in the O/A does not support the imposition of a requirement for election of species. Accordingly, we request that all our claims be examined.

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Enclo: (none)